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BUREAU OF CONSUMER FINANCIAL PROTECTION

Compliance Bulletin and Policy Guidance; 2016-02, Service Providers

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance Bulletin and Policy Guidance.

SUMMARY: The Bureau is reissuing its guidance on service providers, formerly titled CFPB Bulletin 2012-03, Service Providers to clarify that the depth and formality of the risk management program for service providers may vary depending upon the service being performed – its size, scope, complexity, importance and potential for consumer harm - and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations. This amendment is needed to clarify that supervised entities have flexibility and to allow appropriate risk management.

DATES: The Bureau released this Compliance Bulletin and Policy Guidance on its website on October 31, 2016..

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SUPPLEMENTARY INFORMATION:

1. Compliance Bulletin and Policy Guidance 2016-02, Service Providers

The Consumer Financial Protection Bureau (CFPB) expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB's exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

This Bulletin uses the following terms:

Supervised banks and nonbanks refers to the following entities supervised by the CFPB:

- Large insured depository institutions, large insured credit unions, and their affiliates (12 U.S.C. 5515); and
- Certain non-depository consumer financial services companies (12 U.S.C. 5514).

Supervised service providers refers to the following entities supervised by the CFPB:

- Service providers to supervised banks and nonbanks (12 U.S.C. 5515, 5514); and
- Service providers to a substantial number of small insured depository institutions or small insured credit unions (12 U.S.C. 5516).

Service provider is generally defined in section 1002(26) of the Dodd-Frank Act as “any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service.” (12 U.S.C. 5481(26)). A service provider may or may not be affiliated with the person to which it provides services.

Federal consumer financial law is defined in section 1002(14) of the Dodd-Frank Act (12 U.S.C. 5481(14)).

A. Service Provider Relationships

The CFPB recognizes that the use of service providers is often an appropriate business decision for supervised banks and nonbanks. Supervised banks and nonbanks may outsource certain functions to service providers due to resource constraints, use service providers to develop and market additional products or services, or rely on

expertise from service providers that would not otherwise be available without significant investment.

However, the mere fact that a supervised bank or nonbank enters into a business relationship with a service provider does not absolve the supervised bank or nonbank of responsibility for complying with Federal consumer financial law to avoid consumer harm. A service provider that is unfamiliar with the legal requirements applicable to the products or services being offered, or that does not make efforts to implement those requirements carefully and effectively, or that exhibits weak internal controls, can harm consumers and create potential liabilities for both the service provider and the entity with which it has a business relationship. Depending on the circumstances, legal responsibility may lie with the supervised bank or nonbank as well as with the supervised service provider.

B. The CFPB's Supervisory Authority Over Service Providers

Title X authorizes the CFPB to examine and obtain reports from supervised banks and nonbanks for compliance with Federal consumer financial law and for other related purposes and also to exercise its enforcement authority when violations of the law are identified. Title X also grants the CFPB supervisory and enforcement authority over supervised service providers, which includes the authority to examine the operations of service providers on site.¹ The CFPB will exercise the full extent of its supervision authority over supervised service providers, including its authority to examine for compliance with Title X's prohibition on unfair, deceptive, or abusive acts or practices. The CFPB will also exercise its enforcement authority against supervised

¹ See, e.g., subsections 1024(e), 1025(d), and 1026(e), and sections 1053 and 1054 of the Dodd- Frank Act, 12 U.S.C. 5514(e), 5515(d), 5516(e), 5563, and 5564.

service providers as appropriate.²

C. The CFPB's Expectations

The CFPB expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. The CFPB will apply these expectations consistently, regardless of whether it is a supervised bank or nonbank that has the relationship with a service provider.

The Bureau expects that the depth and formality of the entity's risk management program for service providers may vary depending upon the service being performed - its size, scope, complexity, importance and potential for consumer harm - and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations. While due diligence does not provide a shield against liability for actions by the service provider, it could help reduce the risk that the service provider will commit violations for which the supervised bank or nonbank may be liable, as discussed above.

To limit the potential for statutory or regulatory violations and related consumer harm, supervised banks and nonbanks should take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers.

These steps should include, but are not limited to:

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law;
- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts

² See 12 U.S.C. 5531(a), 5536.

appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;

- Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and
- Taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

For more information pertaining to the responsibilities of a supervised bank or nonbank that has business arrangements with service providers, please review the CFPB's *Supervision and Examination Manual: Compliance Management Review and Unfair, Deceptive, and Abusive Acts or Practices*.³

2. Regulatory Requirements

This Compliance Bulletin and Policy Guidance is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Compliance Bulletin and Policy Guidance does not impose any new or

http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf at 34(Compliance Management Review) and 174 (Unfair, Deceptive, and Abusive Acts or Practices).

revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: October 19, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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